

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION, ET AL,

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10 Debtor.

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13
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 November 16, 2007

19 10:09 AM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
24
25

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22
23 **ALSO PRESENT:**

24 **ROBERT MOTHERSHEAD, Pro Se**

25 **(TELEPHONICALLY)**

1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay.

3 Delphi Corporation.

4 MR. BUTLER: Your Honor, good morning. Jack Butler,
5 Kayalyn Marafioti and Al Hogan from the Skadden firm on behalf
6 of the debtors for the twenty-fourth omnibus hearing, the first
7 of two in November.

8 Your Honor, we have filed a proposed agenda. There
9 are five matters on it. With Your Honor's permission we would
10 take the adjourned and the presentment first and then move on
11 to the other matters.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, matter number one on the
14 agenda is the Technology Properties 3018 motion at docket
15 number 10425. We've filed an objection at docket number 10650
16 and we've agreed with Technology properties, now, to move this
17 to the December 20th omnibus hearing. This will ultimately,
18 Your Honor, be dealt with, I believe, in the 3018 docket.

19 THE COURT: Okay.

20 MR. BUTLER: Matter number five on the agenda, Your
21 Honor, which is the presentment, is the application of the
22 equity security holders for authorization of retention of
23 Gregory P. Joseph Law Firms, LLC, as conflicts counsel at
24 docket number 10906. Just one comment, Your Honor, from the
25 debtors. Ms. Steingart did contact us as soon as the need for

1 this additional counsel arose and consulted with the debtors.
2 The debtors have no objection to the relief requested.

3 THE COURT: Okay.

4 MS. STEINGART: Good morning, Your Honor.
5 Bonnie Steingart from Fried Frank on behalf of the Official
6 Committee of Equity Holders. We filed this emergency motion
7 just several days ago when the issue of a conflict first arose.
8 I don't think that we need to go into great detail about it
9 unless the Court would like us to.

10 THE COURT: No, I've read it. You're seeking interim
11 retention at this point?

12 MS. STEINGART: Yes, because Ms. Leonhard --

13 THE COURT: Interim approval of the retention?

14 MS. STEINGART: Right. Because Ms. Leonhard's away
15 and we thought that we would put it on for final on the 29th so
16 that she would have an opportunity to look at all the papers.

17 THE COURT: Okay. Obviously the counsel is getting
18 to work right away. So it makes sense to seek the relief now.

19 MS. STEINGART: Yes.

20 THE COURT: Any -- any other comments or statements?

21 MR. VELEZ RIVERA: Andrew Velez-Rivera for the
22 United States Trustee. Mr. Steingart got it all, Your Honor.
23 Thank you.

24 THE COURT: Okay. So I will enter that order today.

25 MS. STEINGART: All right. I have a black line that

1 has some adjustments that Mr. Leonhard has made. If I might
2 hand up both the clean and the black line.

3 THE COURT: Okay. That's fine.

4 MS. STEINGART: Thank you.

5 MR. BUTLER: Your Honor, the next matter on the
6 agenda, matter number two, is the DIP extension motion at
7 docket number 10787. This matter is uncontested. There is a
8 record, Your Honor, we'd like to make, regarding the extension
9 we have made available. There are seventeen exhibits we'd like
10 moved into evidence. Briefly, to summarize them Your Honor,
11 Exhibit 1 is the declaration of John D. Sheehan, our chief
12 restructuring officer. Exhibits 2 through 8 are the credit
13 agreement documents. Exhibit 9 through 16 are the various
14 court documents applicable to this matter and Exhibit 17 is the
15 affidavit of service.

16 Your Honor, we'd like to move Exhibit 1 through 17
17 in --

18 THE COURT: When you say the credit documents,
19 they're as revised as detailed in the -- in the supplement?

20 MR. BUTLER: That's correct, Your Honor.

21 THE COURT: Okay.

22 MR. BUTLER: And I would note that that Exhibits 5
23 through 7 have been marked highly confidential.

24 THE COURT: Okay.

25 MR. BUTLER: And they're for professional eyes only.

1 THE COURT: Fine.

2 MR. BUTLER: The others -- the others are in the
3 public record and I'd like to move admission of Exhibits 1
4 through 17 into evidence.

5 THE COURT: All right. Does anyone have any
6 objection to that? All right. They're admitted.
7 (Declaration of John D. Sheehan was hereby received as Debtor's
8 Exhibit 1 for identification, as of this date.)
9 (Credit Agreement Documents was hereby received as Debtor's
10 Exhibit 2-8 for identification, as of this date.)
11 (Court Documents was hereby received as Debtor's Exhibit 9-16
12 for identification, as of this date.)
13 (Affidavit of Service was hereby received as Debtor's Exhibit
14 17 for identification, as of this date.)

15 MR. BUTLER: Your Honor, I'd also like to present
16 Mr. Sheehan, he is present in the courtroom today, for any
17 cross examination with respect to his testimony.

18 THE COURT: Okay. Does anyone want to cross examine
19 Mr. Sheehan on his declaration? Okay. Fine.

20 MR. BUTLER: All right. Your Honor, from the
21 debtor's perspective we would rely on the record, I think the
22 question -- the need for extended DIP financing here, I think,
23 is not questioned by any party in the case and we believe the
24 form of proposed order, as it's been amended and black line
25 presented to Your Honor is appropriate.

1 THE COURT: Okay. I've reviewed the supplement,
2 including his description of the relatively minor changes to
3 the proposed extension of financing. I note that you've
4 clarified further the treatment of the PBGC and I just want to
5 make sure I'm clear on this; in a couple of places you've added
6 the word "replacement." So PBGC's replacement liens, as I
7 understand it, that goes both ways, particularly given the
8 reference to the DASHI inter-company transfer order: PBGC only
9 has a lien to the extent it -- it only has a replacement lien
10 to the extent that it had a lien to begin with.

11 MR. BUTLER: That's correct, Your Honor.

12 THE COURT: All right. So this isn't conferring any
13 additional lien on the PBGC?

14 MR. BUTLER: That's correct, Your Honor.

15 THE COURT: Okay. All right. Anyone have any
16 comments on this motion? All right. I will grant it as
17 modified by the supplement.

18 MR. BUTLER: Thank you, Your Honor. Your Honor, the
19 next matter on the agenda is matter number three, this is the
20 Saginaw Chasse Asset Sale Motion at docket number 9368. There
21 were two objections -- three objections, actually, filed to
22 this matter. The first was the UAW's limited objection at
23 docket number 9584, you may remember from earlier hearings that
24 matter has been resolved consensually. Then there were
25 objections that were filed by Joe J. Debtor, T-E-D-D-O-R --

1 THE COURT: Looking for a new client?

2 MR. BUTLER: -- at docket number 9644 and also by
3 U.S. Aeroteam Inc. at docket number 10652. Both of those
4 objections have now been withdrawn on the docket and the
5 matter, therefore, goes -- proceeds this morning on an
6 uncontested basis.

7 There are just a couple of items, Your Honor, that I
8 would like to bring to the Court's attention. First, I'd like
9 to make the evidentiary record regarding the sale of the Chasse
10 business. There are, in connection with this transaction,
11 fifteen documents to be entered into evidence. They include,
12 at Exhibit 1, the declaration of Mr. Sheehan in support of
13 this. Exhibit 2 and 3 include the agreement -- including the
14 third amendment to the agreement. Exhibits 4 through 12 are
15 the Court documents associated with this transaction. Exhibits
16 13 and 14 are the UAW agreements and Exhibit 15 is the
17 Affidavit of Service.

18 Your Honor, I'd like to move Exhibits 1 through 15
19 into the evidentiary record.

20 THE COURT: Okay. Are there any objections to that?
21 All right, they're admitted.

22 (Declaration of Mr. Sheehan was hereby received as Chasse
23 Business's Exhibit 1 for identification, as of this date.)

24 (Agreement was hereby received as Chasse Business's Exhibit 2 &
25 3 for identification, as of this date.)

1 (Court Documents for Chasse was hereby received as
2 Chasse Business's Exhibit 4-12 for identification, as of this
3 date.)

4 (UAW Agreements was hereby received as Chasse Business's
5 Exhibit 13 & 14 for identification, as of this date.)

6 (Affidavit of Service was hereby received as Chasse Business's
7 Exhibit 15 for identification, as of this date.)

8 MR. BUTLER: And similarly, Your Honor, I'd like to
9 present Mr. Sheehan for any cross examination the parties may
10 have with respect to his declaration.

11 THE COURT: Okay. Does anyone want to cross examine
12 Mr. Sheehan on his declaration? Very well. One point -- I
13 just want -- I believe I know the answer to this but as set
14 forth in the supplement, the Canadian assets are being treated
15 slightly differently. The purchase price for those assets,
16 though, hasn't changed has it?

17 MR. BUTLER: No, Your Honor. What's happening now
18 is, as a technical matter, the -- the purchase agreement that
19 was associated with the Canadian assets terminated. And the
20 way that transaction's now been resolved is the overall, what
21 I'll call the master agreement, has been increased by -- by the
22 1. -- I think its 1.2 million, if I recall.

23 THE COURT: Right.

24 MR. BUTLER: And DASS is acquiring those assets from
25 the -- on an inter-company basis from the Canadian entity.

1 THE COURT: Economically, it's basically the same
2 thing.

3 MR. BUTLER: It's -- if everything goes as we're
4 planning, Your Honor, it should be a wash.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, I would point out that this
7 particular transaction for the Saginaw Chasse divestiture, the
8 purchaser is TRW Integrated Chasse Systems LLC. The purchase
9 price is approximately 42.6 million dollars. There is a
10 purchase protection here, in terms of a breakup fee, of 1.5
11 million dollars. And there is the potential for expense
12 reimbursement as well.

13 I should also point out, Your Honor, that DASS LLC is
14 entitled to expense reimbursement from TRW because on the
15 Canadian assets we've agreed to move them to Saginaw and
16 they've -- and TRW's agreed to pay up to 400,000 dollars for
17 the cost of moving those items from Mexico to Saginaw and then
18 another 500 -- it's actually -- the Canadian one is 517,000 to
19 move the assets from Canada to Saginaw. So there's some
20 additional expense reimbursement running to the debtors favor
21 in connection with this transaction as well.

22 The only item -- other item, I think, I'd like to
23 point out to Your Honor, I think Your Honor is aware that this
24 had been -- this matter had been carried so that General Motors
25 and the purchaser could reach their agreements, that's occurred

1 now. And as is always the case, it took some time for the
2 supply agreement and all the UAW matters to be put in order.
3 Now that it's put in order everybody wants this transaction
4 completed promptly. And in order to do that, what we propose
5 to do is to change the two-step sale process slightly by still
6 going out and giving notice -- sale notice within one business
7 day of the entry of this order, if Your Honor enters it, and
8 publication notice within three days or as soon as practical
9 after that. But our proposal would be, Your Honor, if we don't
10 receive any alternative bids by 11 AM prevailing eastern time
11 on November 27th to bring this to the Court for the sale
12 approval at the November 29th omnibus hearing. If, in fact,
13 there is -- there are qualified bids that are received by the
14 bid deadline, then we would conduct an auction of the assets at
15 10 AM prevailing eastern time on or about December 6, 2007,
16 using minimum bid increments of 250,000 dollars. And then we
17 would come to the December -- I believe it's 20th, omnibus
18 hearing for the sale hearing at that time. So it's a bit
19 different then we have used in the past but it is still a two-
20 step process.

21 Today, we're asking you simply to approve the bid
22 procedures and the bid protections that are in place and to
23 determine the -- the sale -- the approval of the sale on either
24 the 29th of November or December 20th, depending upon whether
25 there's going to be an auction.

1 THE COURT: Okay. Does anyone want to address this
2 motion? All right. I obviously reviewed it, as well as the
3 supplement, and in particular reviewed the changes to the
4 bidding procedures, as far as the timing is concerned. Given
5 that this motion was filed a long time ago and that any
6 competitive bidder has certainly been on notice since then, if
7 not well before then, I'm comfortable with the changes on the
8 timing. So, I'll approve it as modified.

9 MR. BUTLER: Thank you, Your Honor. Your Honor, the
10 next matter, and the last matter on the agenda, is the
11 company's exit financing motion at docket number 10854. This
12 matter is contested. There have been timely objections filed
13 by the ad hoc bondholder group at docket number 10903 by
14 Wilmington Trust Company at docket number 10905 and by the
15 Committee of Unsecured Creditors at docket number 10930 and
16 later -- that was redacted later after an announcement from a
17 company they filed their unredacted objection with which we had
18 no objection at docket number 10933, in terms of the filing of
19 the unredacted objection.

20 There have been, Your Honor, two joinders filed
21 overnight that we don't think are particularly timely. In
22 fact, we don't think they are timely under the case management
23 order but we're not going to press the timeliness issue at this
24 hearing.

25 Your Honor, with respect to first the evidentiary

1 record, what I'd like to do is describe the exhibits that are
2 being considered for this hearing, there are twenty-one of
3 them. The first is the -- Mr. Sheehan's declaration at
4 Exhibit 21. The exit financing documents are Exhibits 2-7. I
5 would point out that Exhibits 2-6 are highly confidential.
6 The -- there are presentations that were made with respect to
7 these matters to the joint statutory committees and to the
8 board of directors, those are Exhibit 8 and 10. As we --
9 they're
10 both -- they're all three marked highly confidential. And as
11 Mr. Brody and I have talked about in the past, these are being
12 offered not for the truth of the matters asserted there but in
13 fact that these are the presentations made to those -- to the
14 stakeholders and the board of directors at those dates and
15 times.

16 Exhibit 11 is a news release issued by the company on
17 November 14th. Exhibit 12 through 19 are the related court
18 documents. Exhibit 20 is the summary objection chart and
19 Exhibit 21 is the affidavit of service.

20 Your Honor, I'd like to move the admissions of
21 Exhibit 1 through 21 into evidence.

22 THE COURT: Okay. Are there any objections to those
23 admissions for the purposes for which they're being admitted?

24 MR. FOX: Your Honor, Edward Fox from Kirkpatrick and
25 Lockhart on behalf of Wilmington Trust Company as indenture

1 trustee. With respect to Mr. Sheehan's declaration the
2 ultimate sentence in paragraph 15 is hearsay and we would like
3 that not admitted, certainly not of the truth of the matter
4 asserted.

5 THE COURT: Well, when you say "the debtors," Mr.
6 Sheehan, do you mean yourself? Have you yourself been advised
7 of this?

8 MR. BUTLER: Which sentence -- can we read the
9 sentence into the record, just so --

10 THE COURT: The sentence says, "The debtors have been
11 advised that they should seek to commence syndication efforts
12 as early as practicable." And my question to Mr. Sheehan is,
13 is that something you've been told or is that something you
14 know from your own personal knowledge?

15 MR. SHEEHAN: It was something I was told,
16 Your Honor.

17 THE COURT: Okay. All right.

18 MR. SHEEHAN: I'm sorry, can I just clarify that a
19 little bit more.

20 THE COURT: Well, were you told it by the person who
21 was making the advice or were you told that someone made the
22 advice to someone else?

23 MR. SHEEHAN: What I would say to you, Your Honor, is
24 that through my experience as the chief restructuring officer
25 of Delphi, and with knowledge of what's happening in the

1 capital markets right at the moment, I believe that sentence to
2 be my own personal opinion. It has also been the statements
3 that have been made to me by the banks that we're working with,
4 with respect to the exit financing. That is the basis for that
5 sentence.

6 THE COURT: All right. I -- I will admit that
7 sentence to the extent that he's been told that by the banks
8 that are working on it but not that it's necessarily true.

9 MR. FOX: That's fine, Your Honor. So long as it's
10 not admitted for the truth of the matter asserted.

11 THE COURT: Right. Okay. All right. So those
12 exhibits will be admitted on that basis.

13 (Declaration of Mr. Sheehan was hereby received as Financing
14 Motion's Exhibit 21 for identification, as of this date.)

15 (Financing Documents was hereby received as Financing Motion's
16 Exhibit 2-7 for identification, as of this date.)

17 (Presentations was hereby received as Financing Motion's
18 Exhibit 8-10 for identification, as of this date.)

19 (Related Court Documents was hereby received as Financing
20 Motion's Exhibit 12-19 for identification, as of this date.)

21 (Summary Objection Chart was hereby received as Financing
22 Motion's Exhibit 20 for identification, as of this date.)

23 MR. BUTLER: Your Honor, I -- thank you very much.
24 I'd then like to present Mr. Sheehan for any cross examination
25 by the parties.

1 THE COURT: I'd like to put that off for a minute.

2 MR. BUTLER: Okay.

3 THE COURT: Since it seems to me that the basis for
4 the committee's objection and the chime-ins by the other
5 unsecured creditor groups really goes to a specific issue,
6 which is the direction of this case. And on that point I'd
7 first like to know which of the investors has decided that it's
8 still in this case and which has decided it's out? There was a
9 singularly unresponsive public disclosure filed in the 13(d)
10 statement that one was out. Is it still out and which one was
11 it?

12 MR. UZZI: Your Honor, Gerard Uzzi for -- from
13 White and Case on behalf of Appaloosa and Harbingers, Plan
14 Investors. Your Honor, just so that the record's clear, there
15 was a prior attempt, about two weeks ago, to amend the EPCA.

16 THE COURT: We'll get to that.

17 MR. UZZI: Pardon me?

18 THE COURT: We'll get to that, but continue.

19 MR. UZZI: In that attempt, all of the plan investors
20 other than Goldman Sachs, signed commitments.

21 THE COURT: So Goldman Sachs was the unidentified
22 investor?

23 MR. UZZI: Goldman Sachs was the unidentified
24 investor, Your Honor.

25 THE COURT: Did they give a reason? Did they run out

1 of money?

2 MR. UZZI: Well, Your Honor, I don't -- I don't
3 represent Goldman Sachs.

4 THE COURT: Is anyone here who represents Goldman
5 Sachs? I suspected as much. They will not be able to slink
6 away in this case. If they think they can avoid the
7 reputational and legal issues they are sadly mistaken. You can
8 continue.

9 MR. UZZI: With respect to the amendments that were
10 filed two days ago, Your Honor, all of the plan investors have
11 signed commitments with respect to those.

12 THE COURT: They've come back on board?

13 MR. UZZI: Goldman Sachs, along with all the other
14 plan investors, have signed commitments.

15 THE COURT: Deciding that more than doubling the
16 discount that had previously been negotiated and approved in
17 August of this year was sufficient for their purposes?

18 MR. UZZI: Well, again Your Honor, I do not represent
19 Goldman Sachs.

20 THE COURT: I understand. And they're not here
21 because they thought that they could do this all in secret.
22 All right. You could tell that I believe that there have been
23 extremely improvident developments in this case. And I will
24 summarize them, as far as I'm concerned, briefly. But because
25 the debtor's response indicates that those developments are not

1 final, I'm going to speak to the parties in private about the
2 next week or so.

3 You may recall that there was competition for the
4 plan investment opportunity. And I ruled, both times,
5 including in August of this year -- and as we can all read
6 Mr. Sheehan's affidavit, at that time the turmoil in the credit
7 markets was known, that's paragraph 9 of his affidavit -- and I
8 ruled in favor of this investor group not just because they
9 were the highest bid, because they weren't, but because they
10 were the best bid, because they had done their due diligence,
11 because they were represented to me, and I believed it, that
12 two of the nation's biggest investment banks, including Goldman
13 Sachs, and large hedge funds that had also their own
14 reputational interests, would stick by this debtor and their
15 fundamental economic commitments, unlike the competitive -- the
16 competitor investor who had not done due diligence originally,
17 when this was first negotiated, and had futzed around about the
18 due diligence thereafter.

19 I also approved the August amendment to the EPGA
20 because it curtailed the number of "outs" that the investors
21 had. And in particular, it curtailed the financing out and the
22 market condition out in the material adverse effect provision.
23 I am very distressed, at least based upon what I have seen as
24 the basis for the changes to the EPCA, which is financing
25 conditions that were well known to the parties in August and

1 which they said would not constitute a material adverse effect
2 being asserted, as well as a minor change, generally, as to
3 GM's requirements in the business, which, frankly, also appears
4 to me to have been excluded from the material adverse effect
5 provision of the agreement.

6 Now, you may say that the plan has changed because
7 you can't provide as much cash to cash-out creditors. I have a
8 hard time seeing how that affects the equity investors,
9 particularly given GM's responsible agreements here to take less
10 cash, as a customer and as part of its settlement.

11 The premise of the negotiations that this company has
12 been undertaking over the past several months, and upon which
13 thousands of workers have made enormous personal sacrifices was
14 the framework of these agreements. And I am very distressed
15 that they have changed, sucking out hundreds of millions of
16 dollars over these apparent excuses. I appreciate that this is
17 a big case and a big operating business. It's sort of like an
18 ocean liner, and it's hard to change an ocean liner in mid-
19 stream. But what I have seen suggests to me that maybe, if the
20 parties don't come to their senses and appreciate that as a
21 sponsor of this company they have to stand by the company --
22 because otherwise why have a sponsor, why not give the equity
23 to those who are in the debt already and in the equity already
24 -- that we're going to change course. And that's what I want
25 to talk to you about now.

1 I want to see the two official committees, the
2 debtor, whatever plan sponsors design to be here today and the
3 other two objectors.

4 MR. UZZI: Your Honor, may GM attend?

5 THE COURT: Oh, yes. This way.

6 (Recess from 10:32 till 11:31 AM)

7 THE COURT: Okay. We're back on the record in
8 Delphi.

9 MR. BUTLER: Thank you, Your Honor. Your Honor,
10 continuing with matter number 4 on the record, the exit
11 financing motion. Your Honor, the company would like to
12 proceed with the motion. We've obviously received guidance
13 from chambers and understand the concerns expressed by the
14 Court both on the record and in chambers regarding the
15 potential EPCA amendment, which is on the hearing for
16 November 29th, as I think we had -- the company had stated in
17 their filings, the company is committed to continue to
18 negotiate with our statutory committees between now and the
19 29th regarding both the disclosure statement and the plan
20 amendments and related documents and we will continue to do
21 that. Under Your Honor's prior order, entered in the Court,
22 the company has until the afternoon of November 28th to file
23 changed pages with respect to those matters. And I think we've
24 been pretty clear, both in our public announcements and our
25 filing with respect to this hearing, about the company's

1 commitment to continue to try to bring consensus to this
2 transaction if we can.

3 The company, also, is certainly guided by the
4 concerns expressed about parties in the case negotiating around
5 the edges for their particular pecuniary interest and the
6 company recognizes that for this company to go forward and
7 emerge from Chapter 11 in the short term, which is what we
8 think is absolutely required now that we, from a company
9 perspective have completed all that needs to be done in
10 Chapter 11 and need now to emerge, that we need to get on with
11 the business of financing the case and emerging and we need,
12 obviously, the support of our stakeholders in that regard.

13 Having said that, the company, and Mr. Sheehan's -- I
14 think where we were in this hearing was with Mr. Sheehan's
15 declaration offering Mr. Sheehan for cross examination in his
16 declaration; it's clear, Your Honor, and the company believes
17 that given the capital markets and given the need to raise exit
18 financing on a best efforts basis, and given the fact that we
19 don't believe that the objectors have any particular issue with
20 the structure of the exit financing, putting aside the EPCA and
21 emergence financing, the exit financing. The process we've
22 used to select the proposed agent, the cost associated with
23 them moving forward on this, the ultimate purposes of this and
24 I would point out Your Honor, both that the acknowledgement
25 letter signed by the lead arrangers, as well as the underlying

1 agreements that Your Honor's aware of, provide that the lead
2 arrangers have the opportunity to consider and approve any
3 equity plan that's brought to them by the company and recognize
4 that no equity plan has yet been approved by the Court in terms
5 of the November 29th hearing. They understand that and we
6 understand it.

7 But the company does believe that it's in the best
8 interest of stakeholders and the company to proceed along these
9 lines. And therefore, Your Honor, we would present
10 Mr. Sheehan, with the Court's permission -- we'd present
11 Mr. Sheehan for cross examination by the parties.

12 THE COURT: Okay. Does anyone want to cross examine
13 Mr. Sheehan? All right. Well, Mr. Sheehan, if anything was
14 accomplished by the last hour, at least one thing is clear, you
15 don't have to testify.

16 MR. BUTLER: And Your Honor, I think, from the
17 company's perspective with the record in place, the matter is
18 now admitted into evidence and the record in place, we think
19 the company has demonstrated, under section 363 of the
20 Bankruptcy Code that we've exercised reasonable business
21 judgment that ought to be confirmed by this Court for purposes
22 of moving forward with the exit financing on the terms and
23 conditions set forth in the exhibits that have now been
24 admitted into evidence. And of course, subject to the guidance
25 we received from chambers and have discussed with the

1 objectors, in moving forward to implement those arrangements.
2 Our hope is that we will be in a position, moving forward, to
3 be able to obtain the commitments and move to the -- a
4 confirmed syndication subsequent to the November 29th hearing
5 in the December timeframe. That's our goal. We believe we
6 have the support of our lead arrangers for moving along that
7 timeline. And we would appreciate Your Honor's consideration
8 of this motion.

9 THE COURT: Okay. Does anyone have anything further
10 to say on this matter?

11 MR. BROUDE: Good morning, Your Honor, Mark Broude,
12 Latham & Watkins on behalf of the creditors' committee. Quite
13 simply, Your Honor, and I'll be very brief. We still think
14 this should be adjourned to November 29th. Signing up this
15 agreement adds yet another party whose consent is required if
16 we're going to change the plan of reorganization. We share the
17 debtor's hope that we'll be able to negotiate a fully
18 consensual resolution between now and the 29th. But if we do
19 so, the plan is going to change. And locking in lead
20 arrangers, now, to a particular plan that may or may not be
21 what ultimately comes before Your Honor on the 29th is not
22 necessarily productive.

23 What do we get by that, three business days. If work
24 is going to start right after Thanksgiving, it can start on
25 Friday rather than on Monday. There's not a lot of loss of

1 time there. Whereas, you're locking in another party whose
2 consent we're going to have to get if the plan changes. We
3 just don't see that there's a benefit to be gained whereas we
4 don't -- whereas if we just push it off to the 29th we can have
5 the lead arrangers on board with a plan that we hope will have
6 everyone's support.

7 THE COURT: Okay.

8 MR. BRILLIANT: Good morning, Your Honor, Allan Brilliant
9 on behalf of Caspian Capital, CastleRigg Master Investment,
10 Davidson Kempner Capital Management, Elliott Associates,
11 Numeric Corporate Research and Asset Advisors,
12 Sailfish Capital Partners and White Box Advisors. Your Honor,
13 we have also filed an objection and enjoinder in the Official
14 Creditors' Committee's objection to this motion.

15 We also believe that it's premature for this to be
16 approved at this point. As we say in our papers, we believe
17 the debtors are putting, you know, the cart before the horse.
18 They're going out to seek to get financing for a plan that
19 doesn't have the support of four of the creditor constituencies
20 and at this point in time is not confirmable. We're very
21 concerned that it will create confusion in the marketplace if -
22 - when this plan, you know, will change. And undoubtedly, you
23 know, will change again. The cash needs of the debtors are
24 modified or the equity investments are significantly changed.
25 We also don't see the benefit of having this go out -- be

1 approved today given the holiday next week and the fact that
2 there's going to be a hearing on the 29th when things are going
3 to be much more definitive.

4 As Your Honor knows this plan has changed, you know,
5 three times in the last six or eight weeks. Our expectation is
6 it's going to change again. The debtor's own papers, in their
7 argument today, is that they're going to be having discussions
8 with parties and would hope to resolve these things. So even
9 they acknowledge it's going to change again in the future. And
10 consequently, we just think that it's premature at this point.

11 And then under section 363 standards, although it is a
12 business judgment rule, it would be an abuse of discretion of
13 the board to seek to get financing for a plan that doesn't have
14 the support for any significant creditor body.

15 THE COURT: But as I under -- as I read the
16 engagement letter, it's not financing for a particular plan.
17 And I'll make it perfectly clear in my ruling that that's the
18 case. And I think there's also no doubt that all the parties
19 in interest believe that there are serious adverse consequences
20 to them if the debtor does not emerge in the timeframe they're
21 seeking to emerge in, and exit financing is necessary for that,
22 whether or not the particular plan on the table is -- is that
23 plan. So,
24 I -- I think as long as I'm comfortable that those who would
25 be starting to work today, if I approve this motion, understand

1 that they're raising money based on the fundamentals of the
2 company and not necessarily a particular investment in the
3 company by the plan sponsors, as recently outlined in the press
4 release, then I'm -- I'm reasonably comfortable that what
5 they're doing is in the best interest of the debtor.

6 MR. BRILLIANT: Your Honor, I understand your point.
7 Unfortunately the agreement with the proposed lead arrangers
8 would provide, as Mr. Broude, you know, has said that they
9 would have to approve any changes. So they would be asked to
10 go out and seek financing, again, that they would have the
11 right to veto if they didn't like the way the plan was
12 modified.

13 THE COURT: Well, it's being considered and
14 ultimately would be approved by me, today, on a pretty clear
15 premise, which is that, as I see it, that approval right is
16 something they should be able to assert if the change in the
17 plan jeopardizes their financing. Frankly, that's how I viewed
18 the EPCA when I approved it in August. That the economics of
19 that EPCA, the value of it, was what was to be preserved in the
20 condition saying that the plan will be approved "consistent
21 with" the EPCA. So I would not want to be in the shoes of a --
22 well, of these lead arrangers if they came back to me and said
23 we're vetoing this plan for some reason other than it
24 jeopardizes their financing.

25 MR. BRILLIANT: All right. I have nothing further,

1 Your Honor.

2 THE COURT: Okay.

3 MR. FOX: Your Honor, Edward Fox from Kirkpatrick and
4 Lockhart on behalf of Wilmington Trust Company as Indenture
5 Trustee, I would just join in Mr. Broude's comments with
6 respect to the committee. I certainly appreciate what you just
7 said and that's, I think, very helpful to us. The documents
8 are not structured in that fashion, as it stands, in what, you
9 know, was initially in the motion for the Court to approve. So
10 that certainly would be very helpful if that's changed.
11 Because one of the concerns I have is that we wind up with
12 another club being put in the hand of somebody to beat the
13 creditors with if they don't want to go along with what's being
14 put on the table.

15 THE COURT: Well, these people -- these arrangers are
16 JP Morgan and CitiCorp, in their capacity as lenders, exit
17 lenders. They're not going to be able to beat on the creditors
18 because they may hold debt in the company and want some sort
19 of, you know, advantage out of that. As anyone who enters into
20 a contract with a debtor in possession, they have to deal in
21 good faith, and I'm confident they will. And that's how I view
22 this motion. At the same time, I don't view the debtor or the
23 creditors as having some sort of leverage over them. You know,
24 all they have to do is do their job and raise the financing. I
25 think we all know the type of plan that would jeopardize that

1 financing.

2 MR. ZIMAN: Your Honor, Ken Ziman from
3 Simpson, Thacher and Bartlett on behalf of JP Morgan in its
4 capacity as a proposed lead arranger here. I appreciate Your
5 Honor's comments, I understand. I'll communicate that back to
6 my client. I obviously haven't spoken to them. I don't think
7 what Your Honor is contemplating is a problem. I just would
8 note the one comment I would make on the record is that
9 obviously we care who we lend to, at some level. So if there's
10 a radical change to the identity of the sponsorship here, that
11 will be something we'd have to take into account.

12 THE COURT: I understand. And I think people should
13 take away from my remarks this morning that the identity of the
14 sponsor is very important and how they live up to their
15 responsibilities is very important. And sometimes a sponsor's
16 reputation, unfortunately, may change during the course of a
17 deal.

18 MR. ZIMAN: Thank you, Your Honor.

19 THE COURT: And then they can also clean it up during
20 the course of a deal.

21 MR. SHIFF: Your Honor, if I may, Adam Shiff of
22 Kasowitz, Benson, Torres and Friedman on behalf of the Trade
23 Committee. And I don't want to belabor the record. I know
24 it's late here. We concur with the remarks made by those on
25 this side and would also request that the Court adjourn it to

1 November 29. However, we don't want to belabor the record by
2 repeating what's already been said. I just want it to be
3 clear, thank you.

4 THE COURT: Okay. All right. Based upon the record
5 of this hearing, I won't adjourn this motion but will, rather,
6 approve it. It is clear to me, as a result of this hearing,
7 that the only objection to the financing, and it's a legitimate
8 objection until clarified, is that the financing would be too
9 tied to the present proposal for an investment, by the plan
10 sponsors, in the debtor.

11 However, it's been clarified on the record that that
12 is not the case. And it's my view that while, ultimately, the
13 financing will depend upon the terms of a plan, certainly for
14 the next several days, if not for longer, the lead lenders'
15 efforts will be based upon the fundamental economic condition
16 of the debtor. And on that basis, recognizing that there's
17 been no objection to the limited amount of fees or relatively
18 limited amount of fees that would be incurred based on my
19 approval today - and, more importantly, no objection to the
20 fundamental proposition that the debtors, as they have been
21 saying throughout the last several months, are correct in
22 urging that this process continue to move forward promptly --
23 I believe that it's in the best interest of the debtors to take
24 this next step now. So I'll approve the financing. And I've
25 reviewed the order and the order is consistent with the record

1 and I have no changes in it. Not "the financing" -- I approve
2 the entry into the agreement with the lead lenders.

3 MR. BUTLER: Thank you very much, Your Honor. Your
4 Honor, that's the last matter on today's omnibus agenda. There
5 is a claims hearing that we filed that will be starting this
6 afternoon --

7 THE COURT: It's at 1.

8 MR. BUTLER: -- at 1 o'clock.

9 THE COURT: Right. Let me say, and this somewhat
10 reiterates what I said in private, I think the parties, as they
11 have in this case generally, need to work very hard over the
12 next two weeks. To that end, my view is that if you have a
13 choice between a deposition and a meeting, you should have the
14 meeting and that you should focus on the issues that I've
15 identified as to the direction of the plan.

16 Mr. Butler was correct that I'm of the view that no
17 party in this case should use the need of the debtors, and all
18 of the debtors' constituents, to emerge promptly from Chapter
19 11 now that the debtors have done all of the things that they
20 have done to stabilize their business. And that includes the
21 agreements with the unions and with GM. Having set that
22 fundamental basis for their business valuation, and knowing
23 that this is probably one of the most due diligenced companies
24 on the planet, I would hope that with that direction the
25 parties will negotiate, based on value, and not based on some

1 perceived leverage that they have deriving from the debtors'
2 desire to emerge from Chapter 11 promptly. If they don't do
3 that, then I will turn to parties who do take that approach.
4 That is an approach based on fundamental values and not short-
5 term leverage.

6 Okay. So I'll see whoever's waiting at 1.

7 MR. BUTLER: Thank you, Your Honor.

8 (Proceedings Concluded at 11:49)
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C E R T I F I C A T I O N

I, Pnina Eilberg, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

_____, November 19, 2007

Signature of Transcriber Date

Pnina Eilberg
typed or printed name